IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.230/98

Gopal Lal Rawat

Versus

State & Anr.

DATE OF ORDER :: 06/09/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Rajendra Prasad, for petitioner
Mr. Arun Sharma, P.P.

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Instant petition is directed against the order dated 1st March, 1997 whereby the charge u/s.420 IPC was framed against accused-petitioner.

Respondent No.2-complainant filed a criminal complaint on 29th January, 1992 against petitioner who happens to be the Secretary of Jawaharpuri Bhawan Nirman Sahakari Samiti, Jaipur and also against the President and so also against one Smt. Santosh Mathur for offence u/ss.420, 467, 468, 471 & 120-B IPC in which it was alleged that petitioner as Secretary of the Society allotted a Patta dated 31/7/81 of Plot No.B-43, Shyam Colony, Tonk Road, Jaipur measuring 216.66 sq.yds. and against which full and final payment has been made by the complainant, but later on, it came to his notice that prior to allotment of patta to him, a patta of the same plot had

already been issued to one Smt. Santosh Mathur on 26th July, 1981 and she took forcibly possession because of patta issued to her by petitioner. After the said complaint was received, the matter was sent for investigation u/s.156(3) Cr.P.C. and after due investigation, the charge sheet was filed against accused-petitioner u/ss.420, 467 & 468 IPC. After hearing the parties, the court discharged the petitioner from Sections 467 & 468 IPC, but framed charge against him u/s.420 IPC. It is relevant to mention at this stage that during investigation both the pattas were sent to the FSL and hand writing expert has submitted his report in which signatures were found to be of same person who has issued patta to the petitioner who happens to be the Secretary of the Society.

The foremost contention of counsel for petitioner is that there was no dishonest or fraudulent intention of petitioner at the time of sale of land in question and even as per his own complaint, possession was handed over. As such, if any third party got a patta of the same land at later stage produced that in no manner held it to be a fraudulent or dishonest inducement of a person in any manner and infact the ingredients of Section 420 IPC are completely missing in the present case. As such, the very charge framed against petitioner u/s.420 IPC from the material came on record is not made out and in such circumstances, if he is directed to face trial it

will be nothing, but abuse of the process of law and in such circumstances, it deserves to be quashed.

Learned Public Prosecutor while supporting the order submits that what more dishonest inducement can be there of a person when two pattas have been issued of the same Plot No.B.43 and despite the same was already issued to Smt. Santosh Mathur on 26th July, 1981, a fresh patta was issued to the complainant after 4-5 days by petitioner and his signatures have been verified available on patta by the FSL report. In such circumstances, no error has been committed by learned trial Judge in framing charge against him under order impugned.

I have considered the submissions of counsel for parties and perused the order impugned.

The complaint made by the respondent No.2 was to the effect that patta was issued to him and full consideration was received and possession was handed over, but later on, it revealed that a week prior to it, patta was issued by petitioner to one Smt. Santosh Mathur and she took possession of the plot in question forcibly on the strength of patta in her favour which came to their notice during investigation and FSL report also corroborated about the signatures of petitioner.

Without expressing any opinion any further in the matter, this court finds that ingredients of Section 420 IPC prima facie are made out and learned trial Judge has not committed any error in framing charge against petitioner. It is, however, always available for petitioner to raise all submissions in his defence about issuance of patta in favour of Smt. Santosh Mathur which was available on record issued in his signatures.

This court does not find any substance or error committed by learned trial Judge in passing order impugned.

Consequently, the misc. petition fails and is hereby dismissed, along with Stay Petition No.161/98. Record be sent back forthwith to learned trial Judge, who is directed to expedite the trial.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.